

**AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND
THE CITY OF MILPITAS GRANTING PROGRAM FUNDS
FOR THE FY 2002 SUPPLEMENTAL APPROPRIATIONS GRANT FOR CITIZEN
CORPS AND CERT, THE FY 2002 SUPPLEMENTAL APPROPRIATIONS GRANT
FOR EMERGENCY OPERATIONS PLANNING, THE FY 2002 STATE DOMESTIC
PREPAREDNESS GRANT PROGRAM, AND THE FY 2003 EMERGENCY
MANAGEMENT PERFORMANCE GRANT**

BACKGROUND

The County of Santa Clara ("County") is the fiscal agent for the Santa Clara County Operational Area ("OA"). On March 10, 2003, the Governor's Office on Service and Volunteerism awarded the County a FY 2002 Supplemental Appropriations Grant for Citizen Corps and CERT Grant for the purpose of distributing these funds to OA for the implementation, expansion and development of Community Emergency Response Team ("CERT") and Citizen Corps Programs. On May 2, 2003, the Governor's Office of Emergency Services awarded the County a FY 2002 Supplemental Appropriations Grant for Emergency Operations Planning for the purpose of distributing these funds to the OA for emergency operations planning. On July 2, 2003, the Governor's Office of Homeland Security awarded the County FY 2002 State Domestic Preparedness Grant Program funds for the purpose of distributing these funds to the OA for increasing homeland security, including purchasing equipment. On June 1, 2003, the Governor's Office of Emergency Services awarded the County an Emergency Management Performance Grant for the purpose of distributing these funds to the OA for developing and maintaining the level of capability to prepare for, to mitigate, to respond to, and to recover from emergencies and disasters.

The Emergency Preparedness Council (EPC) is the OA Council and is authorized to allocate these grant funds in accordance with State guidelines. This agreement ("Agreement") is to transfer a portion of these grant funds to the City of Milpitas ("City") in accordance with the EPC's spending priorities and the obligations imposed on the OA by the State.

THE AGREEMENT

Article 1. Transfer of Grant Funds.

1.1 Amount of Payment.

- (a) The County will transfer to the City a portion of the funds that the County receives under the FY 2002 Supplemental Appropriations Grant for Citizen Corps and CERT, the FY 2002 Supplemental Appropriations Grant for Emergency Operations Planning, The FY 2002 State Domestic Preparedness Grant Program, and the FY 2003 Emergency Management Performance Grant programs. This

amount will not exceed \$380.84 for the Fiscal Year 2002 Supplemental Appropriations Grant for Citizen Corps and CERT, \$9028.51 for the Fiscal Year 2002 Supplemental Appropriations Grant for Emergency Operations Planning, \$11,828.51 for the Fiscal Year 2002 State Domestic Preparedness Grant Program, and \$5,349.74 for the Fiscal Year 2003 Emergency Management Performance Grant, for a total grant maximum of \$26,587.60.

- (b) In lieu of receiving FY 2002 State Domestic Preparedness Grant Program funds, or any portion of these funds, the City may elect to have the County purchase equipment as specified in the County's Application for the FY 2002 State Domestic Preparedness Grant Program (which is incorporated to this Agreement as specified below). If the City notifies the County that it is electing to receive the equipment, the County will purchase the equipment selected by the City, distribute the equipment to the City, and reduce the amount of cash transferred under this Agreement by the amount equal to the cost of the equipment. Such notification must be received by August 5, 2003

Article 2. City's Obligations.

2.1 Use of Funds.

- (a) The City will use the specific funds and equipment granted under this Agreement only for the purpose of implementing the specific programs for which the funds were granted.
- (b) The City will use the funds and equipment granted under this Agreement in a manner consistent with:
 - (1) the applications submitted by the County to the State for the grants under this Agreement;
 - (2) the grant guidance issued by the State for the grants under this Agreement; and
 - (3) the notifications issued by the State of the approval of the grants under this Agreement.
- (c) The documents described in Section 2.1(b)(1)-(3) of this Agreement (collectively the "State Grant Requirements") are on file with the County and the granting agencies of the State, and are hereby incorporated into this Agreement. The City hereby acknowledges that it has received a copy of the State Grant Requirements.

2.2 Master Grant Obligations.

- (a) The City agrees to comply with all applicable requirements and assurances contained in the *State Grant Requirements*. The City may designate vendors or subgrantees to fulfill these obligations.
- (b) If any provisions of this Agreement conflict with the *State Grant Requirements*, the provisions of the *State Grant Requirements* will control.

2.3 Reporting.

- (a) The City will prepare progress reports for the duration of the term of this Agreement. The reports must include the status of all activities, including equipment purchases.
- (b) The reports are due to the County representative identified in Section 5.1 as follows:
 - (1) Performance Period 1 – due by August 15, 2003
 - (2) Performance Period 2 – due by October 5, 2003
 - (3) Performance Period 3 – due by January 5, 2004
- (c) The County will provide the City with a report template for each reporting period, and the City will utilize the template.
- (d) For each separate grant program under this Agreement, the City will notify the County representative identified in Section 5.1, within 15 days, when the City has completed the applicable program requirements.

2.4 Equipment.

- (a) Except for the manufacturers' warranties, the equipment granted under this Agreement, if any, is being provided "as is", and all other warranties, express or implied are disclaimed.
- (b) The County is not responsible or liable for the cost of procurement of any substitute equipment, and the County is not liable for any damages experienced by any person or entity arising as a result of:
 - (1) City's misuse of the equipment;
 - (2) City's failure to provide services pertaining to the equipment; or
 - (3) any defects in the equipment.

Article 3. Term and Termination.

3.1 Term of Agreement.

This Agreement is effective from the date of execution through the date that the County receives notification from the State that each of the grants under this Agreement have been closed out. The County will notify the City upon receiving such notification from the State.

3.2 Termination.

- (a) Either party may terminate this Agreement for cause upon written notice to the other in accordance with this Section. For the purpose of this Agreement, cause includes, but is not limited to a material breach of this Agreement, or a violation of any applicable laws.
- (b) Opportunity to cure. The nonbreaching party, within ten (10) days of its determination of a material breach of this Agreement, shall give written notice of the breach to the breaching party, specifying the breach. The breaching party shall not be deemed in default hereunder and the nonbreaching party shall not institute proceedings or exercise any remedies against the breaching party unless the breach has not been cured, corrected or remedied within thirty (30) days after the giving of such notice of breach or within such longer period as may be reasonably required to cure, correct or remedy the breach, provided the breaching party has commenced such cure, correction or remedy within such thirty (30) day period and diligently and continuously pursues such cure, correction or remedy.

Article 4. Liabilities.

4.1 Mutual Indemnification.

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the County and the City agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of other

parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other parties under this Agreement.

Article 5. Miscellaneous.

5.1 Notice.

All notices required by this Agreement will be deemed given when in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such other address as the party may designate in writing:

To the City:

Americo Silvi
Milpitas City Hall
455 East Calaveras Blvd.
Milpitas, CA 95035

To the County:

Terry Gitlin
Director of Emergency Preparedness
County of Santa Clara
Office of Emergency Services
55 W. Younger Ave., Suite 435
San Jose, CA 95110

5.2 Compliance and Nondiscrimination.

The parties will comply with all applicable Federal, State, and local laws and regulations. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended, the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973 (Sections 503 and 504), the California Fair Employment and Housing Act (Government Code sections 12900 et seq.), and California Labor Code sections 1101 and 1102. The parties will not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor will the parties discriminate in the provision of services provided

under this Agreement because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

5.3 Governing Law.

This Agreement has been executed and delivered in, and will be construed and enforced in accordance with, the laws of the State of California.

5.4 Assignment.

The parties may not assign this Agreement or the rights and obligations hereunder without the specific written consent of the other.

5.5 Entire Agreement.

This document represents the entire Agreement between the parties with respect to the subject matter hereof. All prior negotiations and written and/or oral agreements between the parties with respect to the subject matter of this Agreement are merged into this Agreement.

5.6 Amendments.

This Agreement may only be amended by an instrument signed by the parties.

5.7 Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

5.8 Severability.

If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

5.9 Waiver.

No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing, and shall apply to the specific instance expressly stated.

Signed:

COUNTY OF SANTA CLARA

CITY OF MILPITAS

by _____
Peter Kutras, Jr.
Acting County Executive

_____ date

by _____
Thomas J. Wilson
City Manager

_____ date

Approved as to Form and Legality:

Approved as to Form and Legality:

Jared A. Goldman, Deputy County Counsel

Steven Mattas
City Attorney